

**FILED****Apr 02 - 2024**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

APRIL CHANDLER,

Plaintiff,

vs.

MICHAEL MALOY

Defendant

Case No.: 324-CV-206

John M. Domurad, Clerk

**SUPPLEMENTAL  
MEMORANDUM OF LAW**

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## Defendant

Case No.: 324-CV-206

**SUPPLEMENTAL  
MEMORANDUM OF LAW**

**DEFENDANT'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF HIS MOTION**

**TO DISMISS PLAINTIFF'S AMENDED COMPLAINT**

## **INTRODUCTION**

In the interests of justice and judicial economy, Defendant submits this Supplemental Memorandum of Law in support of his motion to dismiss Plaintiff's amended complaint in accordance with FRCP 12(b)(6) **Failure to State a Claim** and 12(b)(3) **Improper Venue**.

As set forth in greater detail in the Memorandum, Plaintiff has:

- 1) Failed completely to set forth material facts which relate to any conduct (good or bad) which relates in any manner to defendant.
- 2) Failed to establish proper venue.

1

**ARGUMENT**

2

3) Actions are subject to dismissal when there is a **Failure to State a Claim** under Rule  
4 12(b)(6) where the allegations in a complaint are insufficient to establish a cause of  
5 action.

6

7 All federal civil complaints must contain sufficient factual matter to give the claim facial  
8 plausibility and allow the court to draw reasonable inference that the defendant is liable for the  
9 misconduct alleged. *See Ashcroft v. Iqbal*, No. 07-1015 (U.S. May 18, 2009) which places on  
10 plaintiffs the burden of showing that their complaints are adequate, rather than requiring the  
11 defendant to prove the pleading's inadequacy, stating 'threadbare recitals of the elements of a  
12 cause of action, supported by mere conclusory statements, do not suffice' and that federal civil  
13 complaints must contain 'more than unadorned, the-defendant-unlawfully-harmed-me  
14 accusations.' Rather than showing a conceivable right to relief, the plaintiff now must show a  
15 plausible, fact-based right to the relief sought. The complaint must do more than allege the  
16 plaintiff's entitlement to relief, it must show that entitlement with facts.

17

19

20 Plaintiff's amended complaint contains 'threadbare' recitals of elements which are at best vague  
21 and irrelevant and at worst seek to shade the truth or are outright lies.

22

23

24 Language like '*petitioner was cautious given defendant's friendship with Greg Ellis and*  
25 *something didn't feel right*' (paragraph 4 in the amended complaint) or '*defendant Michael*  
26 *Maloy ghosted petitioner*' (paragraph 6 in the amended complaint) are examples of this  
27 vagueness and hardly causes for action.

28

1 Language like '*defendant was introduced as a work made for hire editor*' (paragraph 3 in the  
2 amended complaint) or '*after the petitioner completed the film narration and produced and*  
3 *directed the project to fruition*' (paragraph 6 in the amended complaint) are outright lies, easily  
4 provable with documentary evidence.  
5  
6

7 The complaint also contains the conclusory statements that the defendant '*had already filed a*  
8 *copyright application, fraudulently failing to disclose that he was work made for hire*'  
9 (paragraph 18 in the amended complaint) and '*petitioner believes defendants concocted their*  
10 *plan with a clear intention to harm petitioner with a conspiracy to steal petitioner's film and raw*  
11 *footage*' (paragraph 26 in the amended complaint). There are no factual enhancements to these  
12 conclusory statements and no mention of legal rights plaintiff believes the defendant violated.  
13  
14

15 Re the copyright conclusory statement, the U.S. Copyright office holds that a copyright work is  
16 'made for hire' when a certain type of work is created as a result of an express written agreement  
17 between the creator and a party specially ordering or commissioning it that the work shall be  
18 considered a work for hire. There was no such written agreement between the parties that  
19 contained any language that could be construed as 'work for hire.' (See attached Exhibit #1)  
20  
21

22 Re the conspiracy conclusory statement, civil conspiracy is not considered a separate cause of  
23 action. This means there must be an underlying tort to bring a civil conspiracy claim. If the acts  
24 were lawful under tort law, the claim for civil conspiracy would fail. The plaintiff must also  
25 prove that the conspirators intended to commit an unlawful or tortious act. Plaintiff here does not  
26 cite any torts or applicable laws.  
27  
28

1 The amended complaint makes a vague claim for relief based on a hypothetical and conjectural  
2 estimate of future earnings, '*a substantial sum which could return \$2.5m - \$5m to petitioner paid*  
3 *over 3 years for global distribution.*' (paragraph 26 in the amended complaint).

5 Plaintiff offers no evidence of this that is concrete, particularized, actual or imminent and is  
6 therefore not adequate grounds for relief. Plaintiff's predictions of injury are merely speculative,  
7 depending on guesses about plaintiff's circumstances.

9  
10 2) Actions are subject to dismissal when there is an **Improper Venue** defense under Rule  
11 12(b)(3) when the venue where the action is filed is incorrect.

13 Generally in civil court, where the defendant lives and the extent to which the lawsuit is tied to a  
14 specific location are key considerations when determining venue. Usually, venue is in the county  
15 where the person being sued lives or does business or the dispute arose, for example where a  
16 contract was entered into or broken.

18  
19 According to 28 U.S. Code § 1333 which governs all civil actions in district courts of the United  
20 States, a civil action may be brought 1) in a judicial district in which any defendant resides, if  
21 all defendants are residents of the State in which the district is located, 2) a judicial district in  
22 which a substantial part of the events or omissions giving rise to the claim occurred and most  
23 importantly in this case, 3) if the jurisdiction is based in whole or in part on the presence of a  
24 case which 'arises under the Constitution, laws or treaties of the United States', the venue is  
25 limited to the district where the defendant resides.

1 Defendant Michael Maloy lives and does business in Los Angeles County, California. As  
2 evidenced by Plaintiff's Exhibit #5, pages 18- 19 (Document 13, filed 3/6/24) Plaintiff's business  
3 address is in Los Angeles County.  
4

5  
6 The plaintiff's case relies in part on its federal jurisdiction due to a claim that U.S. Copyright law  
7 was violated.  
8

9 Furthermore, the contract that is the predicating event for this case contains this language:  
10  
11 '*This agreement shall be construed, interpreted and governed by the laws of the State of*  
12 *California.*' and, '*All disputes, which may arise between or among the parties hereto under or*  
13 *with respect to this Agreement, will be determined solely by arbitration in accordance with the*  
14 *rules of the American Arbitration Association.*' (See attached Exhibit #1)

15  
16 Relying on the arguments above, defendant asserts that this court's venue is improper.  
17

## **CONCLUSION**

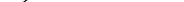
For the aforementioned reasons, Defendant respectfully requests that the court should dismiss the case with prejudice under Federal Rules of Civil Procedure 12(b)(6) and 12(b)(3).

An accepted principle of judicial restraint is that federal courts will address only 1) an actual case or controversy and 2) there can be no case or controversy without a plaintiff who has suffered actual or imminent injury traceable to defendant's conduct and who, therefore, has standing to sue.

Upon information and belief, I assert that plaintiff has no standing on which to sue.

| Respectfully,

4/2/24



Dated

### Signature

Michael Maloy

440 N. Venice Blvd, Venice, CA 90291

Name \_\_\_\_\_

## Address

310-962-3122

Malovty@mac.com

### Telephone Number

### E-mail Address

## **EXHIBIT #1**

Contract between defendant and plaintiff.

## **LETTER OF AGREEMENT**

Dated: January 5, 2023

## Re: Fountain Of Youth Documentary Project

This letter sets forth the material terms of the agreement ("Agreement") between Empirical Media ("Producer,") and April Chandler/Mephobia Media ("Executive Producer"), with respect to the production of a documentary project tentatively entitled, "The Fountain Of Youth" as follows:

1. In collaboration with Executive Producer, Producer will create a revised version of the existing documentary.
2. Producer, for a fee not to exceed \$75,000, will manage all aspects of the creation and delivery of the documentary, including writing, editing, graphics, music, voice-over, audio mix and color correction.
3. Terms of payment are as follows: Upon execution of the agreement, 50% of Producer's fee; 25% upon approved final edit; 25% upon delivery.
4. All disputes, which may arise between or among the parties hereto under or with respect to this Agreement, will be determined solely by arbitration in accordance with the rules of the American Arbitration Association
5. This agreement shall be construed, interpreted and governed by the laws of the State of California applicable to agreements entered into and wholly performed therein and is a binding contract between and among the undersigned. Facsimile counterparts shall be deemed acceptable. Please indicate your agreement with the foregoing by signing in the space provided below.

Very Truly Yours,

**ACCEPTED AND AGREED:**

Michael Maloy  
Empirical Media

April Chandler  
Mephobia Media

Date: \_\_\_\_\_ 1/23/23

Date: \_\_\_\_\_ 1/23/23

## CERTIFICATE OF SERVICE

I, Michael Maloy, hereby certify that on the 2nd day of April, 2024, I sent a copy of this filing to Plaintiff at her last known address via first class mail.

April Chandler

200 Washington Avenue

#7181

Endicott, NY 13760

4/2/24

## Signature

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